

A.F.R.

(43)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

WRIT PETITION NO.2914 OF 2003

PETITIONER:

Krishna Datt Upadhyay,
S/o Ram Sumiran Upadhyay,
Aged about 43 years,
R/o Keshkal (Harra Padav),
Thana: Keshkal,
Distt.: Bastar (C.G.)

Versus

RESPONDENTS:

State of Chhattisgarh and four
others

POST FOR ORDER ON 3rd DECEMBER, 2003

Sd/-
L.C. Bhadoo
Judge

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Present: -

Shri Gurudev Sharan, Advocate:

For the petitioner.

Shri Ranbir Singh Marhas, Govt. Advocate: For the State/respondents.

Before: Hon'ble Shri L.C. Bhadoo, J

ORDER

(Passed on 30th November, 2003)

December corrected
11.2.04

1. By this writ petition under Article 226/227 of the Constitution of India, the petitioner has challenged the externment order dated 08.09.2003 passed by the District Magistrate, Jagdalpur, in Criminal Case No.10/2003, by which the learned District Magistrate has directed the petitioner to leave several districts viz., Bastar, Dantewada, Kanker, Chandrapur (Maharashtra) and Koraput (Orissa).
2. Brief facts leading to filing of this writ petition are that the Superintendent of Police, Jagdalpur, filed a complaint before the District Magistrate, Jagdalpur, on 30th June, 2003, under the Chhattisgarh State Security Act, 1990, for externment of the petitioner on the ground that the petitioner always remains in company of unsocial elements and involved himself in act of rioting, assaulting, criminal intimidation, political and communal activities and disturbance of peace and tranquility of the area and such activities of the petitioner has become danger for the maintenance of public order and on account of these activities the civilians are

scared of the petitioner and fear to make report. In this complaint, the list of cases which were registered and challaned against the petitioner are mentioned in para 5.3 of the writ petition. On receiving this complaint the District Magistrate after preliminary enquiry and satisfying himself with the contents of the complaint issued show cause notice to the petitioner on 28.07.2003 under the Chhattisgarh State Security Act, 1990, in Criminal Case No.10/2003. In response to that, the petitioner filed reply and he was asked for production of evidence, but further, in spite of giving him opportunity, the petitioner could not produce evidence. The prosecution in support of the complaint examined, Arvind Dwivedi, Thana Incharge, Keshkal.

3. The learned District Magistrate after considering the reply of the petitioner and prosecution evidence and placing reliance on the evidence of Arvind Dwivedi and the past conduct of the petitioner and criminal cases filed against him, reached the conclusion that the alleged allegations against the petitioner are true and he is dangerous for the maintenance of public order in the district. Therefore, the District Magistrate, passed the impugned order dated 08.09.2003 under Sections 5 (a) & 5 (b) of the Chhattisgarh State Security Act, 1990. The petitioner has primarily challenged this order on the ground that no reasonable opportunity of hearing was given to the petitioner, no reasonable opportunity was given to him for adducing the evidence and the grounds taken by the District Magistrate in passing the impugned order being old and stale, and principles of natural justice have not been followed. Therefore, he requested for quashing of the impugned order.
4. In spite of the opportunity given to the State, the State has not been able to file the return. Therefore, I have heard learned counsel for the parties.
5. Sections 5 (a) & 5 (b) of the Chhattisgarh State Security Act, 1990, lays down that,

"5. Removal of persons about to commit offence, --
Whenever it appears to the District Magistrate----

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(a) *that the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property; or*

(b) *that there are reasonably grounds for believing that such person is engaged or is about to be engaged in the commission of an offence involving force or violence or an offence punishable under Chapter-XII, XVI or XVII or under Section 506 or 509 of the Indian Penal Code, 1860 (45 of 1860) or in the abatement of any such offence, and when in the opinion of the District Magistrate witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regards the safety of their person or property;*

the District Magistrate, may by an order in writing duly served on him or by beat of drum or otherwise as the District Magistrate thinks fit, direct such person or immigrant to remove himself outside the district."

6. The perusal of the impugned order reveals that the allegations against the petitioner upon which the learned District Magistrate placed reliance are that the petitioner is in company with unsocial elements involved in act of rioting, assaulting, threatening to kill, criminal intimidation and involved in political and communal activities and creating hatred between two communities of Hindu & Muslim and committing such serious offences which are against the public and national interest. The general public is scared of the petitioner and they are not coming forward to make complaint against him. Therefore, in order to maintain public peace, law and order in the police station area of Keshkal, it is necessary to extern the petitioner and reference has been made in the impugned order about the past criminal record of the petitioner. The learned District Magistrate also relied upon the statement of the Station House Officer, Police Station: Keshkal. The perusal of the order further reveals that Arvind Dwivedi, Station House Officer: Keshkal, has supported the complaint, but in the cross-examination he has admitted that after 1998, no case was registered against the petitioner; only one case was entered in the Roznamcha of 1998 and upon that no action was taken. Apart from that all the cases were 8-10 years old. He has further stated that during his tenure no incident was reported against the petitioner on account of which any situation of rioting was created. In the year 1998, one

complaint under Sections 107 & 116 of the Cr.P.C. was entered in the record, but no further action was taken on that. Therefore, it is undisputed fact that after 1991, no regular criminal case was registered against the petitioner. Only one report in the year 1998 was lodged that too remained in the Roznamcha Police Diary and no challan was filed against the petitioner. Therefore, on the date of the complaint i.e. June, 2003, since last twelve years, no cases were challaned or reported against the petitioner and the petitioner's case is that even in all those cases which were challaned against the petitioner in the years, 1987, 1988, 1989, 1990 & 1991, he has been acquitted and no case is pending against him and the impugned order of the learned District Magistrate does not show that in any of those cases whether the petitioner was convicted or sentenced.

7. If we look into the above facts of the case, there was no sufficient material before the District Magistrate to form an opinion for his satisfaction and to reach the conclusion that in the last 12 years the petitioner was in association with unsocial elements involved himself in rioting, assaulting, criminal intimidation or political or communal activities which became danger for the maintenance of public order, peace and tranquility or in any way, the petitioner was involved in creating disharmony or hatred between the two communities. As has been held in the case of **Ayub Khan vs. State of M.P. and another** reported in **1994 (1) Vibha 168** that the externment order passed on the basis of record that during the last 18 months no case was reported against the petitioner, no evidence as to involvement in any of the crime or incident adversely affecting the public order and the ground appears to be old and stale and further held that,

"The powers of externment are to be exercised sparingly with care and circumspection. They cannot be used for punishing a man for his past deeds. If nothing substantial during the recent period has been brought out, it cannot be said that because of the presence of the person the life of the persons of the locality will be in danger or there will be disturbance of public order."

In order to pass the externment order, it is further held that,

"A stringent test must be applied in order to avoid easy possibility of abuse of this power to the detriment of the fundamental freedom. Natural justice must be fairly complied with and the vague allegations and secret hearings are gross violations of Articles 14, 19 & 21 of the Constitution of India."

8. In the present case also except one incident of 1998, that remained in the case diary only, no challan was filed, within last 12 years, no incident was reported against the petitioner. Moreover, the petitioner is an elected member of Janpad Panchayat and is a Journalist. Therefore, there was no sufficient material before the learned District Magistrate to reach the conclusion that the petitioner was in any way dangerous or engaged or was to be engaged in commission of any offence mentioned in sub-section (b) of Section 5 of the Chhattisgarh State Security Act, 1990, or his presence in Keshkal city was in any way danger to the public or national interest. Therefore, the order of the learned District Magistrate suffers from illegality being based on no material and based on past incidents which were old and stale. Therefore, the order of the learned District Magistrate cannot be sustained as the same has not stood up to the test of the principles governing the passing of externment order of a person under Sections 5 (a) & 5 (b) of the Chhattisgarh State Security Act, 1990.
9. Now, coming to the question that under Section 9 of the Chhattisgarh State Security Act, 1990, the petitioner has the alternative remedy to file an appeal before the State Government, but as has been held in the case of **Ayub Khan (supra)** passed by the Division Bench that if an order is passed on consideration of vague grounds, absence of cogent reasons, non-application of mind and the alleged incident being old and stale, the Court can exercise extra-ordinary jurisdiction under Article 226 of the Constitution of India. As has been held by the Hon'ble Apex Court in the case of **Harbans Lal Sahnia & another vs. Indian Oil Corporation Ltd., & others** reported in **2003 AIR SCW 126** that if the writ petition is filed for enforcement of fundamental rights and there is failure of principles of natural justice where the orders or proceedings are wholly without jurisdiction, then the High Court is entitled to invoke extra ordinary jurisdiction.

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10. Based on the above principles laid by the M.P. High Court and the Hon'ble Apex Court, if we look into the present case, the finding of the learned District Magistrate is based on the old and stale incidents and virtually on no evidence and thereby, the fundamental rights of the petitioner under Articles, 14, 19 & 21 of the Constitution have been violated. Therefore, this Court can look into the facts of the present case and invoked the extra ordinary jurisdiction.

11. In the result, the externment order dated 08.09.2003 is quashed and the writ petition is allowed. There is no order as to costs.

Sd/-
L.C. Bhadoo
Judge

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